

Application No.: 10/743,667  
Amendment Dated: June 13, 2008  
Reply to Office Action Mailed: January 23, 2008

## **REMARKS/ARGUMENTS**

Claims 1, 3, 4 and 7 through 26 are pending in the instant application. The applicants have amended claim 1, support for which may be found in Figs. 1 and 2, as originally filed, and elsewhere throughout applicants' specification. No new matter is added.

The Examiner has rejected claims 1, 4, 7 and 11 through 13 under 35 U.S.C. 102(b) as being anticipated by Fuchs et al., U.S. Patent No. 4,291,698. The Examiner has rejected claims 15-26 under 35 U.S.C. 103(a) as being unpatentable over Fuchs et al. in view of Kammerer et al., U.S. Patent No. 6,152,935. The rejection of applicants' claims, as amended, is respectfully traversed. Reconsideration and favorable action is respectfully solicited in view of the following comments.

The Examiner has rejected claims 1, 4, 7 and 11 through 13 under 35 U.S.C. 102(b) as being anticipated by Fuchs et al., U.S. Patent No. 4,291,698. Fuchs et al. has been discussed in applicants' previous response, which discussion is reiterated herein.

Fuchs et al. fail to disclose a coupler which is positioned axially between and joins the first retaining member to the second retaining member at the second surface and the third surface, as claimed herein. Withdrawal of the rejection is requested on this basis.

The Examiner has rejected claims 15-26 under 35 U.S.C. 103(a) as being unpatentable over Fuchs et al. in view of Kammerer et al., U.S. Patent No. 6,152,935.

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The deficiencies of Fuchs et al. are discussed above and reiterated here.

Kammerer et al. disclose an H-type fastener for tissue having a central spring member (Abstract). The Examiner suggests that the "helical member" (i.e. the spring) of Kammerer et al. be substituted for the coupler of Fuchs et al. in order to provide "flexibility allowing better placement of the device" (Office Action, page 8). Applicants traverse the Examiner's reasoning.

Since the "helical member" of Kammerer et al. is a tension spring, if placed into the position of the Fuchs et al. flexible hinge 3 (Fuchs et al., col. 4, line 50), as proposed by the Examiner, the Fuchs et al. device would be biased against closing, thus destroying its function.

If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). **MPEP 2143.01**

Withdrawal of the rejection is requested on this basis, as presenting an inadequate prima facie case of obviousness.

Further, nothing in Fuchs et al. would support moving the flexible hinge 3 to a position axially between the second and third surfaces of the first and second retaining members, as claimed herein.

Withdrawal of the rejection is further requested on this basis, as presenting an inadequate prima facie case of obviousness.

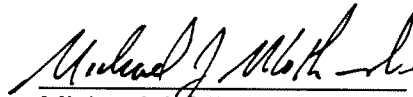
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The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 50-2478(13792).

In view of the foregoing, it is respectfully submitted that the present claims re in condition for allowance. Prompt notification of allowance is respectfully solicited.

Respectfully submitted,

Date: June 13, 2008

A handwritten signature in black ink, appearing to read "Michael J. Mlotkowski", written over a horizontal line.

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